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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/461,709 12/14/99 BARCLAY

W 2997-1-3-2

HM22/0214

EXAMINER

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WARE, D

ART UNIT

PAPER NUMBER

1651

DATE MAILED:

02/14/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.  
09/461,709

Applicant

Barclay

Examiner

Ware

Group Art Unit

1651

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on 1-31-00.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 38-93 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) 38-93 are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 38-52, drawn to a process for producing lipids using a specific set of conditions different from Groups II-III, classified in class 435, subclass 243.
  - II. Claims 53-66, drawn to a process for producing lipids using a specific set of conditions different from Group I and III, classified in class 435, subclass 257.1.
  - III. Claims 67-81, drawn to a process for producing lipids using a specific set of conditions different from Groups I-II, classified in class 536, subclass 1.11.
  - IV. Claims 82-88, drawn to a food product, classified in class 426, subclass 7.
  - V. Claims 89-93, drawn to a nutrient supplement, classified in class 424, subclass 439.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I-V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions because the process steps of each of Groups I-III do not require the same initial process step for fermentation and thus, they have different modes of operation, different functions and perhaps different effects in that the yield of lipid products may be different.
3. Inventions I-III and IV-V are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as

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claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the products as claimed can be made by another and materially different process wherein lipid ingredients may be obtained by different process steps. Further, Groups IV-V are different in that Group IV does not require any other additional ingredients.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. Also because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Furthermore, because these inventions are distinct for the reasons given above and the search required for one Group is not required for another Group the restriction is deemed proper. A telephone call was made to Mr. Cha on February 13, 2001 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CAR 1.143).

Group , restriction for examination purposes as indicated is proper.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245.



**DEBORAH K. WARE**  
**PATENT EXAMINER**

Deborah K. Ware

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**Feburary 13, 2001**